

Office of Science and Technology Policy

§ 2400.21

those delegations. If possible, these listings shall be unclassified.

§ 2400.19 Declassification by the Director of the Information Security Oversight Office.

If the Director of the Information Security Oversight Office (ISOO) determines that information is classified in violation of Executive Order 12356, the Director, ISOO may require the information to be declassified by the agency that originated the classification. Any such decision by the Director ISOO may be appealed by the Director, OSTP to the National Security Council. The information shall remain classified, pending a prompt decision on the appeal.

§ 2400.20 Systematic review for declassification.

(a) *Permanent records.* Systematic review is applicable only to those classified records, and presidential papers or records that the Archivist of the United States, acting under the Federal Records Act, has determined to be of sufficient historical or other value to warrant permanent retention.

(b) *Non-permanent records.* Non-permanent classified records shall be disposed of in accordance with schedules approved by the Administrator of General Services under the Records Disposal Act. These schedules shall provide for the continued retention of records subject to an ongoing mandatory review for declassification request.

(c) *Office of Science and Technology Policy Responsibility.* The Director, OSTP, shall:

(1) Issue guidelines for systematic declassification review and, if applicable, for downgrading. These guidelines shall be developed in consultation with the Archivist and the Director of the Information Security Oversight Office and be designated to assist the Archivist in the conduct of systematic reviews;

(2) Designate experienced personnel to provide timely assistance to the Archivist in the systematic review process;

(3) Review and update guidelines for systematic declassification review and downgrading at least every five years

unless earlier review is requested by the Archivist.

(d) *Foreign Government Information.* Systematic declassification review of foreign government information shall be in accordance with guidelines issued by the Director of the Information Security Oversight Office.

(e) *Special procedures.* The Office of Science and Technology Policy shall be bound by the special procedures for systematic review of classified cryptologic records and classified records pertaining to intelligence activities (including special activities) or intelligence sources or methods issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

§ 2400.21 Mandatory review for declassification.

(a) Except as provided in paragraph (d) of this section, all information classified under Executive Order 12356 or predecessor orders shall be subject to a review for declassification by the Office of Science and Technology Policy, if:

(1) The request is made by a United States citizen or permanent resident alien, a federal agency, or a State or local government; and

(2) The request is made in writing and describes the document or material containing the information with sufficient specificity to enable the Office of Science and Technology Policy to locate it with a reasonable amount of effort.

(b) Requests should be addressed to: Executive Director, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20506.

(c) If the request does not reasonably describe the information sought to allow identification of documents containing such information, the requester shall be notified that unless additional information is provided or the request is made more specific, no further action will be taken.

(d) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a

§ 2400.21

President is exempted from the mandatory review provisions of § 2400.24(a) of this part. The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services or the Archivist pursuant to sections 2107, 2107 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matters interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(e) Office of Science and Technology Policy officials conducting a mandatory review for declassification shall declassify information no longer requiring protection under Executive Order 12356. They shall release this information unless withholding is otherwise authorized under applicable law.

(f) Office of Science and Technology Policy responses to mandatory review requests shall be governed by the amount of search and review time required to process the request. Normally the requester shall be informed of the Office of Science and Technology Policy determination within thirty days of receipt of the original request (or within thirty days of the receipt of the required amplifying information in accordance with paragraph (c) of this section). In the event that a determination cannot be made within thirty days, the requester shall be informed of the additional time needed to process the request. However, OSTP, shall make a final determination within one year from the date of receipt of the request except in unusual circumstances.

(g) When information cannot be declassified in its entirety, OSTP will make a reasonable effort to release, consistent with other applicable law,

those declassified portions of that requested information that constitute a coherent segment.

(h) If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reason for denial, and notice of the right to appeal the determination in writing within sixty days of receipt of the denial to the chairperson of the Office of Science and Technology Policy Review Committee. If appealed, the requester shall be informed in writing of the appellate determination within thirty days of receipt of the appeal.

(i) When a request is received for information originated by another agency, the Executive Director, Office of Science and Technology Policy, shall:

(1) Forward the request to such agency for review together with a copy of the document containing the information requested, where practicable, and where appropriate, with the Office of Science and Technology Policy recommendation to withhold or declassify and release any of the information;

(2) Notify the requester of the referral unless the agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(3) Request, when appropriate, that the agency notify the Office of Science and Technology Policy of its determination.

(j) If the request requires the rendering of services for which fees may be charged under title 5 of the Independent Offices Appropriation Act, 31 U.S.C. 483a, the Executive Director, Office of Science and Technology Policy, may calculate the anticipated amount of fees to be charged.

(1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) *Search for records.* \$5.00 per hour when the search is conducted by a clerical employee; \$8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) *Reproduction of documents.* Documents will be reproduced at a rate of

32 CFR Ch. XXIV (7-1-08 Edition)

\$.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by OSTP until a reply is received from the requester.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made to the Treasury of the United States and mailed to the Executive Director, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20506.

(4) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(5) If a requester fails to pay within thirty days for services rendered, further action on any other requests submitted by that requestor shall be suspended.

(6) The Executive Director, Office of Science and Technology Policy may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the OSTP or the general public.

§ 2400.22 Freedom of Information Act and Privacy Act requests.

The Office of Science and Technology Policy shall process requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, or the Privacy Act of 1974, in accordance with the provisions of those Acts.

§ 2400.23 Prohibition.

In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12356 and Directive No. 1, or this regulation:

(a) The Office of Science and Technology Policy shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under Executive Order 12356.

(b) When the Office of Science and Technology Policy receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases which the originating agency determines in writing that a response under paragraph (a) of this section is required, the Office of Science and Technology Policy shall respond to the requester in accordance with that paragraph.

§ 2400.24 Downgrading.

(a) When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

(b) Classified information marked for automatic downgrading is downgraded accordingly without notification to holders.

(c) Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information. Prompt notice of such downgrading shall be provided to known holders of the information.

Subpart E—Safeguarding

§ 2400.25 Access.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has